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GOVERNOR

STEVEN K. YOUNG, DIRECTOR

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January 10, 2005

Michael E. Marshall  
Secretary of the Senate  
Iowa Senate  
State Capitol  
Des Moines, Iowa 50319

Margaret A. Thomson  
Chief Clerk of the House  
House of Representatives  
State Capitol  
Des Moines, Iowa 50319

Dear Mr. Marshall and Ms. Thomson:

Pursuant to Acts of the 80<sup>th</sup> General Assembly, chapter 165, section 21, I am pleased to submit this Report on the Implementation of House File 672, an Act relating to the regulation of adult day services. This report covers the period from the enactment of HF 672 through November 2004.

The implementation of HF 672 has been a collaborative effort of the Departments of Inspections and Appeals, Elder Affairs, and Public Safety. In addition, the Departments have worked with the Department of Human Services, providers, consumer advocates, and others during this effort.

Information is provided to show the current and projected receipt of fees and costs of implementation. As the report indicates, the blueprint and certification fees received and deposited in the general fund do not equate to the current or future costs associated with the policy establishment and enforcement of HF 672.

If you have any questions concerning this report or implementation of the legislation, please contact my office at 281-5457.

Sincerely,



STEVEN K. YOUNG  
Director

cc: Joint Health and Human Services Appropriations Committee

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IOWA DEPARTMENT OF  
INSPECTIONS AND APPEALS

Report on the Implementation of  
House File 672  
Adult Day Services

December 2004

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## **Report on the Implementation of HF 672 Adult Day Services**

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### **I. OVERVIEW OF HOUSE FILE 672**

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House File 672, an act relating to the regulation of adult day services, became effective July 1, 2003. The purpose of the Act is to promote and encourage adequate and safe care for adults with functional impairments.

The Act charges the Department of Elder Affairs (DEA) with establishing policy for Adult Day Services Programs and the Department of Inspections and Appeals (DIA) with enforcing newly established Iowa Code chapter 231D. The State Fire Marshal of the Department of Public Safety is charged with adopting rules relating to the certification and monitoring of the fire and safety standards of adult day services programs.

Other key provisions of the legislation:

- Define Adult Day Services as an organized program providing a variety of health, social, and related support services for sixteen hours or less in a twenty-four hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.
- Provide for certification of Adult Day Services Programs.
- Provide for condition certification of programs.
- Provide for the acceptance of voluntary accreditation with a recognized accrediting entity for state certification.
- Provide for criminal and dependent adult abuse record checks of prospective employees.
- Provide enforcement provisions, including penalties.
- Provide for a complaint process.
- Provide for a public disclosure of final findings from monitoring evaluations and complaint investigations.

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### **II. ADMINISTRATIVE RULES PROCESS**

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In accordance with HF 672, the Department of Elder Affairs (DEA) establishes the standards for certification and monitoring of and complaint investigations. The law allows for DEA to consider nationally recognized standards for adult day services programs in the establishment of the standards.

During the period of July to November 2003, DEA developed proposed administrative rules with input from a diverse group of agencies and organizations. The Workgroup included:

- Adult Day Services industry
- Alzheimer's Association Chapters
- Providers of service to elders and persons with disabilities
- Consumer Advocacy Organizations
- Assisted Living industry
- Area Agencies on Aging
- Legislative Services Agency
- State Agencies (Inspections and Appeals, Human Services, Public Safety, Public Health and Iowa Finance Authority)
- Governor's Office

On November 18, 2003, the Commission to the Department of Elder Affairs approved IAC 321 Chapter 24, Adult Day Services, administrative rules for Notice of Intended Action. The Notice was published in the December 10, 2003, Iowa Administrative Bulletin.

Public comments were accepted from December 10, 2003 through January 7, 2004. A public hearing on the noticed rules was held on January 7, 2004 at multiple sites via the Iowa Communications Network.

The Commission to the Department of Elder Affairs approved final adoption of the rules on March 23, 2004. The adopted rules were filed and published in the April 14, 2004, Iowa Administrative Bulletin.

IAC 321, Chapter 24, Adult Day Services, became effective May 19, 2004.

Amendments to clarify medication administration provisions of the Adult Day Services administrative rules were approved for Notice of Intended Action by the Commission to the Department of Elder Affairs on November 16, 2004. These amendments were published in the December 8, 2004, Iowa Administrative Bulletin. Public comments will be accepted from December 8, 2004 through January 6, 2005.

During September and October 2003, the Department of Public Safety (DPS) developed proposed administrative rules for fire and safety standards for Adult Day Services Programs in consultation with the above-mentioned workgroup. A Notice of Intended Action was published in the December 10, 2003, Iowa Administrative Bulletin. A public hearing was held on January 7, 2004 at the same time and location as the public hearing being held by DEA on the Chapter 24 rules. This permitted persons interested in both hearings to only travel once to participate. As with the DEA rules, the hearing was held at multiple sites via the Iowa Communications Network. The DPS rules were adopted

March 25, 2004, and became effective June 1, 2004. The citation for the fire and safety rules is 661 Iowa Administrative Code 5.510.

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### **III. PROVIDER AWARENESS EFFORTS**

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Since July 1, 2003, the Department of Inspections and Appeals has made three presentations regarding Adult Day Services Program regulation to two provider associations. In addition, the Department of Elder Affairs has presented at conferences for numerous professional trade associations.

In November 2003, the Department of Elder Affairs sponsored a two-day Technical Assistance Adult Day Services Conference in collaboration with the National Adult Day Services Association. Over 70 Adult Day Services providers attended this event.

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### **IV. IMPLEMENTATION**

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HF 672, except section 22, became effective July 1, 2003. Section 22 became effective May 30, 2003. Section 22 provided that voluntary accreditation, prior to July 1, 2003, of an adult day services program serving persons with mental retardation by the Commission on Accreditation of Rehabilitation Facilities (CARF) for personal and social services or by the Council on Quality and Leadership in supports for persons with disabilities was to be accepted by DIA for state certification. These programs are commonly referred to as “day habilitation”. Section 22 was applicable only for July 1, 2003 through June 30, 2004.

To address the provisions of Section 22 of HF 672, ensure ongoing public funding of existing programs, and certify programs voluntarily accredited, DIA first developed application forms and certificates. Seventy-two applications were completed for providers seeking certification under these provisions.

During the past eighteen months, DIA and DEA have provided technical assistance to many providers. In addition, training on the law and administrative rules have been provided by DIA, DEA and the State Fire Marshal’s Office to the Department of Human Services, the adult day service trade association, the Iowa Association of Homes and Services for the Aging, the Iowa Health Care Association, and others.

In addition to the certification of day habilitation programs under Section 22 of HF 672 ending June 30, 2004, it was identified, either by the program or by DIA, that other conditionally certified programs also met the day habilitation criteria rather than the adult day services programming criteria. As a result of these two situations, DIA began the transition of oversight responsibility of these day habilitation programs to the Department

of Human Services (DHS) in June 2004. Two meetings, as well as a conference call, were held with DHS staff. As of July 1, 2004, approximately 45 day habilitation programs (primarily serving Mentally Retarded/Developmentally Disabled participants) have been transitioned to DHS for continued oversight.

Processing applications, including conducting monitoring evaluations, for full certification of Programs could not begin until the administrative rules became effective on May 19, 2004. As a result, DIA issued three to six month extensions to allow Programs to continue operation after July 1, 2004 during the application and certification process.

DIA is currently completing the application and certification processing of 26 Programs certified conditionally or via accreditation in fiscal year 2004. Four of these Programs have been certified through voluntary accreditation by the Rehabilitation Accreditation Commission (CARF). Blueprints have been submitted for construction of three new Programs. The administrative rules allowed existing programs to become certified without undergoing structural blueprint review. However, an on-site has been conducted at 32 programs to assure structural compliance administrative rules and to review the Program's emergency/evacuation plan. The State Fire Marshal has performed a life safety code inspection at each Program. A monitoring evaluation of a Program to determine compliance will be conducted 60-90 days following the issuance of a certificate.

DIA, DEA, DHS, and the Adult Day Services trade association have worked together to notify Adult Day Services Programs receiving public funds of the legal requirement to seek certification. It is anticipated there may be an additional 30 to 35 programs seeking certification, as a result of this notification.

DIA has received no complaints to date regarding Adult Day Services Programs. However, as consumers become more aware of the regulation of these programs, complaints will most likely begin to be received.

As a way to solicit satisfaction data with the monitoring evaluation process, a questionnaire will be distributed to Adult Day Services Programs following an initial certification on-site visit. Similarly, questionnaire will be distributed to complainants following a complaint investigation, to determine if the complaint was addressed adequately. Any adverse issues identified with DIA staff, the evaluation process or the investigation will be addressed first by the Adult Services Bureau Chief and may be referred to a higher level, as necessary or requested.

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## V. FEES AND EXPENDITURES

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As mentioned previously, three state agencies each have a role in the administration and regulation of Adult Day Services Programs – Elder Affairs (DEA), Inspections and Appeals (DIA), and Public Safety (DPS). DEA received no appropriation for activities involved in the implementation of HF 672 for either FY04 or FY05. DIA received an appropriation from the Senior Living Trust Fund in the amount of \$800,000 for regulation of assisted living programs, adult day services programs, and elder group homes. In addition, a portion of the appropriation is used to pay DPS for life safety code inspections for all three certified entities. All fees received are deposited in the General Fund.

### **Fiscal Year 2004**

In addition to an appropriation, DIA was given authority to use carryover revenue from the Fee Fund. Because the funding for DIA and DPS is for multiple activities, each department has estimated the portion of the funding expended for Adult Day Services Program administration and regulation. As DEA received no appropriation, estimated expenditures related to implementation of HF 672 came from the current level of resources. Following are the estimated figures:

| DEPARTMENT            | ESTIMATED<br>FEES* | ESTIMATED<br>EXPENDITURES | DIFFERENCE        |
|-----------------------|--------------------|---------------------------|-------------------|
| Inspections & Appeals | \$-0-              | \$40,000                  |                   |
| Elder Affairs         |                    | \$19,540 **               |                   |
| Public Safety/SFM     |                    | \$-0-                     |                   |
| <b>TOTAL</b>          | <b>\$-0-</b>       | <b>\$59,540</b>           | <b>(\$59,540)</b> |

\* Iowa Code chapter 231D did not assess a fee for conditional certification, accredited certification or day habilitation. However, DEA is proposing legislation in 2005 to do so.

\*\* This amount does not include staff time and related costs of planning and implementing the Adult Day Services Technical Assistance Conference held on November 13-14, 2003, in West Des Moines. The estimated cost of this event was \$10,000.

**Fiscal Year 2005**

For Fiscal Year 2005, the fees and costs for the three agencies are estimated as follows:

| <b>DEPARTMENT</b>     | <b>ESTIMATED FEES</b> | <b>ESTIMATED EXPENDITURES</b> | <b>DIFFERENCE</b>  |
|-----------------------|-----------------------|-------------------------------|--------------------|
| Inspections & Appeals | \$40,950*             | \$120,000                     |                    |
| Elder Affairs         |                       | \$ 30,000                     |                    |
| Public Safety/SFM     |                       | \$ 18,000 **                  |                    |
| <b>TOTAL</b>          | <b>\$40,950</b>       | <b>\$168,000</b>              | <b>(\$127,050)</b> |

\* This amount represents the blueprint and certification fees received through November 2004 and the estimated additional fees for the remainder of FY05. As mentioned previously, Iowa Code chapter 231D did not assess a fee for accredited certification. However, DEA is proposing legislation in 2005 to do so.

\*\* Based on 51 Adult Day Services Programs requiring Life Safety Code inspections by the State Fire Marshal.

**Fiscal Year 2006**

It is estimated that the expenditures and the services provided for Fiscal Year 2006 will be the same as Fiscal Year 2005 for DIA and DPS, at the current level of appropriation. DEA indicates it will be unable to sustain this level of support without additional appropriation. It should also be noted that DEA is unable to do the following without adequate additional resources identified above: updating of rules and statutes, analysis of program data and trend data, provision of technical assistance, educational presentation, and consumer awareness activities.

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**VI. NEXT STEPS**

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DIA will continue to complete the process for those Programs seeking certification and, in collaboration with DEA and the State Fire Marshal’s Office, provide technical assistance to new Programs. For those Programs receiving public funds and not having sought certification, DIA will be contacting them in January 2005 to notify them that they are considered to be operating an uncertified Program. Appropriate enforcement actions will be taken, as authorized under Iowa Code chapter 231D or for continued funding.

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## VII. RECOMMENDATIONS

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The Department, in cooperation with the Department of Elder Affairs and the Department of Public Safety, make the following recommendation based on experiences over the past eighteen months:

- Authority to establish fees for processing applications and issuing certifications for voluntarily accredited Adult Day Services Programs should be added to Iowa Code Chapter 231D.

Please contact Beverly Zylstra, DIA Legislative Liaison, at 515-281-6442 or at [beverly.zylstra@dia.state.ia.us](mailto:beverly.zylstra@dia.state.ia.us) with any questions concerning this report or about the enforcement of Iowa Code chapter 231D and associated administrative rules. Questions specific to the establishment of policies should be directed to Joel Wulf, DEA Legislative Liaison, at 515-242-3326 or at [joel.wulf@iowa.gov](mailto:joel.wulf@iowa.gov). Questions specific to life safety code/state fire marshal inspections should be directed to Betsy Dittmore, DPS Legislative Liaison, at 515-281-5043 or at [dittemor@dps.state.ia.us](mailto:dittemor@dps.state.ia.us).